

(2005) 09 DEL CK 0103
In the Delhi High Court
Case No : LPA No. 4 of 2003

Suraj Pal Singh

APPELLANT

Vs

The Presiding Officer and Another

RESPONDENT

Date of Decision : 09-09-2005

Acts Referred:

Constitution of India, 1950 — Article 142
Factories Act, 1948 — Section 35(1), 49B
General Clauses Act, 1897 — Section 3(66)
Industrial Disputes Act, 1947 — Section 2, 25B, 25B(1), 25B(2), 25F
Industrial Employment (Standing Orders) Act, 1946 — Section 5
Payment of Gratuity Act, 1972 — Section 2

Citation : (2005) 124 DLT 248 : (2006) 108 FLR 865 : (2006) 2 LLJ 335 :
(2006) 3 SLJ 344

Hon'ble Judges : Sanjiv Khanna, J; Dr. M.K. Sharma, J

Bench : Division Bench

Advocate : Sanjay Ghosh and Pragnya, for the Appellant; Sushant Kumar, for the Respondent

Final Decision : Dismissed

Judgement

Sanjiv Khanna, J.

Facts and Judgment of the learned Single Judge:

1. The appellant, a workman, has filed the present appeal against the order of the learned Single Judge dated 29.5.2002 dismissing the writ petition filed by him, inter alia, holding that the appellant is not entitled to benefit and protection u/s 25F read with Section 25B of the Industrial Disputes Act, 1947 (hereinafter referred to as the "Act", for short).

2. The brief facts are that the appellant was employed by the respondent-Municipal Corporation of Delhi as a daily rated casual worker in the year 1984. Services of the appellant were terminated in September, 1986. He raised an industrial dispute leading to passing of an Award dated 1.11.1994. The Labour

Court held that the appellant was not entitled to any relief as he had not been in "continuous service for one year" u/s 25F read with Section 25B of the Act.

3. Civil Writ Petition No.1337/1996 was filed by the appellant Along with two other workmen against the common Award dated 1.11.1994.

4. The learned single Judge referred to Sections 25F and 25B of the Act and interpreted the said Sections. He held that the two other petitioners in the said writ petition were in "continuous service for a year" and entitled to protection and benefit u/s 25F of the Act. However, in the case of the appellant, the learned single Judge came to the conclusion that the appellant had not worked for 240 days in any of the calendar years from 1984 till 1986 and also in 12 months prior to termination of his services in 1986 and Therefore his case did not fall within the protective umbrella of Section 25F of the Act.

Submissions:

5. The learned counsel for the appellant submitted that the learned single Judge has erroneously interpreted Sections 25F and 25B of the Act and the said Sections should be liberally construed in favor of the workmen. According to the learned counsel appearing for the appellant, the appellant had worked for 223 days from April 1984 to December 1984 and thereafter had worked for 27, 22 and 23-1/2 days in January, February and March, 1985 respectively. Thus, in all he had worked for a period of 296 days between April 1984 to March 1985 i.e. more than 240 days and Therefore, the appellant was entitled to benefit and protection of Section 25F of the Act.

6. It is the contention of the learned counsel for the appellant that the phrase "continuous service for not less than one year" used in Section 25F and as defined in Section 25B(1) of the Act should not be interpreted to mean a calendar year from January to December, but should mean any period of 12 months during which the employee has worked with the employer. It is Therefore, submitted that the period of one year mentioned in Section 25F is not with reference to a calendar year beginning from January and ending with December and it should be liberally interpreted to mean period of 12 months in all.

7. The second contention of the learned counsel for the appellant is that an employee should be deemed to be "in continuous service for not less than one year" if he has worked for 240 days in a period of 12 months. It is submitted that period of 240 days mentioned in Section 25B(2) of the Act should be read liberally and treated as part of Section 25B(1). In the alternative, it is submitted that Section 25B(2) should be interpreted in a manner that if a workman has worked for 240 days in a period of 12 months at anytime during his employment, he should be treated as having worked continuously for a period of not less than one year.

8. The learned counsel appearing for the respondent however, contended that

the learned single Judge has after examining the records come to the conclusion that the appellant had not worked for 240 days in any of the calendar days or in one year prior to the date of the termination.

Principles of Interpretation :

9. The Act being in the nature of a social welfare legislation for the benefit of workmen, it is natural that provisions of the said Act should be given liberal construction. Reference in this regard may be made to the judgment of the Supreme Court in the case of Workmen of American Express International Banking Corporation Vs. Management of American Express International Banking Corporation, holding as follows:-

" The principles of statutory construction are well settled. Words occurring in statutes of liberal import such as social welfare legislation and human rights" legislation are not to be put in Procrustean beds or shrunk to Liliputian dimensions. In construing these legislations the imposture of literal construction must be avoided and the prodigality of its misapplication must be recognised and reduced. Judges ought to be more concerned with the "colour", the "content" and the "context" of such statutes (we have borrowed the words from Lord Wilberforce"s opinion in *Prenn v. Simmonds*). In the same opinion Lord Wilberforce pointed out that law is not to be left behind in some island of literal interpretation but is to enquire beyond the language, isolated from the matrix of facts in which they are set; the law is not to be interpreted purely on internal linguistic considerations. In one of the cases cited before us, that is, *Surendra Kumar Verma v. Central Government Industrial Tribunal-cum-Labour Court*, we had occasion to say,

"Semantic luxuries are misplaced in the interpretation of "bread and butter" status. Welfare statutes must, of necessity, receive a broad interpretation. Where legislation is designed to give relief against certain kinds of mischief, the Court is not to make inroads by making etymological excursions."

10. At the same time, Supreme Court in the case of *Maruti Udyog Ltd. Vs. Ram Lal and Others*, , has also cautioned courts that while interpreting provisions, specially deeming provisions, the language used and the precise legal fiction created has to be kept in mind without being guided by "sympathy" factor. It will be appropriate to reproduce relevant portions of the said judgment:-

"35. In construing a legal fiction the purpose for which it is created should be kept in mind and should not be extended beyond the scope thereof or beyond the language by which it is created. Furthermore, it is well known that a deeming provision cannot be pushed too far so as to result in an anomalous or absurd position. The court must remind itself that the expressions like "as if" are adopted in law for a limited purpose and there cannot be any justification to extend the same beyond the purpose for which the legislature adopted it.

36. In a recent decision, the Constitution Bench of this Court in *K. Prabhakaran v.*

P. Jayarajan¹ opined:

"A legal fiction presupposes the existence of the state of facts which may not exist and then works out the consequences which flow from that state of facts. Such consequences have got to be worked out only to their logical extent having due regard to the purpose for which the legal fiction has been created. Stretching the consequences beyond what logically flows amounts to an illegitimate extension of the purpose of the legal fiction...."

37. Furthermore, in a situation of this nature, the rule of purposive construction should be applied.

38. The statutory scheme does not envisage that even in the case of closure of an undertaking, a workman who although had not been retrenched would be re-employed in case of revival thereof by another company. If the submission of Mr Das is accepted, the same would not only run contrary to the statutory scheme but would make the definition of retrenchment contained in Section 2(oo) of the 1947 Act otiose.

11. The Supreme Court in *Maruti Udyog Ltd.* (supra) further observed as follows:-

Sympathy

44. While construing a statute, "sympathy" has no role to play. This Court cannot interpret the provisions of the said Act ignoring the binding decisions of the Constitution Bench of this Court only by way of sympathy to the workmen concerned.

45. In *A. Umarani v. Registrar, Coop. Societies*² this Court rejected a similar contention upon noticing the following judgments: 131 (32) SCC 68

"68. In a case of this nature this Court should not even exercise its jurisdiction under Article 142 of the Constitution of India on misplaced sympathy.

69. In *Teri Oat Estates (P) Ltd. v. U.T., Chandigarh*³ it is stated: 144 SCC 36

"36. We have no doubt in our mind that sympathy or sentiment by itself cannot be a ground for passing an order in relation where to the appellants miserably fail to establish a legal right. It is further trite that despite an extraordinary constitutional jurisdiction contained in Article 142 of the Constitution of India, this Court ordinarily would not pass an order which would be in contravention of a statutory provision.

37. As early as in 1911, *Farewell, L.J. in Latham v. Richard Johnson & Nephew Ltd.*⁴ observed: (All ER p.123 E)

"We must be very careful not to allow our sympathy with the infant plaintiff to affect our judgment. Sentiment is a dangerous will o' the wisp to take as a guide in the search for legal principles."

70. Yet again, recently in *Ramakrishna Kamat v. State of Karnataka*⁵ this Court

rejected a similar plea for regularisation of services stating: 377(78) SCC 7

We repeatedly asked the learned counsel for the appellants on what basis or foundation in law the appellants made their claim for regularisation and under what rules their recruitment was made so as to govern their service conditions. They were not in a position to answer except saying that the appellants have been working for quite some time in various schools started pursuant to resolutions passed by Zila Parishads in view of the government orders and that their cases need to be considered sympathetically. It is clear from the order of the learned Single Judge and looking to the very directions given, a very sympathetic view was taken. We do not find it either just or proper to show any further sympathy in the given facts and circumstances of the case. While being sympathetic to the persons who come before the court the courts cannot at the same time be unsympathetic to the large number of eligible persons waiting for a long time in a long queue seeking employment."

Provisions:

12. In order to consider the arguments of the parties and the contentions raised by them it is necessary to refer to Sections 25B and 25F of the Act. The two sections are reproduced below:-

"25B. Definition of continuous service

For the purposes of this Chapter,-

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or as strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

(i) one hundred and ninety days in the case of a workman employed below ground in a mine;

(ii) two hundred and forty days, in any other case;

(b) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

(i) ninety -five days, in the case of workman employed below ground in a mine;
and

(ii) one hundred and twenty days, in any other case."

"25 F. Conditions precedent to retrenchment of workmen-

No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay (for every completed year of continuous service) or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government (for such authority as may be specified by the appropriate Government by notification in the Official Gazette).

Section 25F of the Act:

13. Section 25F of the Act specifies conditions which have to be complied with before an employee can be retrenched. If a workman is "in continuous service for not less than one-year" then strict compliance with clauses (a) and (b) of Section 25F of the Act is mandatory. However, compliance with clause (c) is directory as held by the Supreme Court in the case of Gurmail Singh and Others Vs. State of Punjab and Others, and substantial compliance would be enough. Without complying with the mandatory conditions, termination of services of an employee is ab initio void and illegal.

14. For Section 25F of the Act to apply and be invoked, a workman should have been "in continuous service for not less than one year" under an employer. Only if this condition is satisfied, then a workman gets protection u/s 25F of the Act and is also entitled to retrenchment compensation.

15. Section 25B is a definition clause, which defines the phrase "in continuous service for not less than one year" used in Section 25F and other provisions of Chapter VIA of the Act. It consists of two parts, Sub-section (1) and (2). Section 25B(1) of the Act:

16. Section 25B(1) of the Act states that continuous service means uninterrupted service but certain periods are to be included and counted for the purpose of continuous service. Thus by a deeming fiction under sub-section (1), period during which a workman is absent from service on account of sickness, authorised leave, accident or strike, which is not illegal, or lock-out or cessation of work, which is not due to any fault on the part of the workman, are to be treated as periods during which the employee is in uninterrupted service. Interruptions on these accounts have to be ignored and in spite of these interruptions an employee is to be treated as in continuous service of the

employer. To appreciate and understand Section 25B(1) of the Act, the expression "Continuous Service" and the word "year" as used in the said Section are required to be interpreted.

The expression "Continuous Service":

17. The expression "continuous service" which as per Section 25B(1) means "uninterrupted service". The said expression has not been specifically examined and delineated by the Supreme court, albeit in the case of American Express International Banking Corpn (supra), Supreme Court has examined the expression "actually worked under the employee" and held at page 76 as under :-

"This expression, according to us, cannot mean those days only when the workman worked with hammer, sickle or pen, but must necessarily comprehend all those days during which he was in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc."

18. In the above judgment the term "continuous service" or "uninterrupted service" was not directly examined but the observations made are relevant and give an indication how the said term should be understood.

19. The said expression in Section 25B(1) has been interpreted by Gujarat High Court in case of Moti Ceramic Industries v. Jivuben Rupabhai, reported in (2000) 2 CLR 156. The relevant observations made in para 10 of the said judgment are reproduced below :

"10. In view of the above provisions, it is clear that sub-section (1) of section 25B of the Act provides that the workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service. Continuous service would be interrupted only by two modes and that is by workman leaving the employment or employer terminating his service by dismissal or discharge. Mere absence of the workman without obtaining prior leave for a day would not put an end to the Continuous service of a workman. Sub-section (2) opens with the words where a workman is in continuous service within the meaning of sub-clause (1) and these words unmistakably indicates that the legislature has desire and intention to cover the cause even of those workmen who were not in continuous service for the purpose of retrenchment. Mere fact that the workman had not worked for 240 days in some year/s during his long employment would not debar him from claiming entire amount of retrenchment compensation as provided u/s 25F of the I.D. Act. Mere fact that during some years in this long period, the workman had not worked for 240 days is not an answer to deprive him of the retrenchment compensation by ignoring the entire period. Once it is proved and/or found that the workman is in continuous service, then, it is wholly immaterial whether he has worked for particular number of days in a particular year. The contingency which demands the worker to work for a period of 240 days as provided by sub sec.(2) of Section 25B of the Act would come into play provided the workman is not in continuous service as required u/s 25B of the Act.

Both, on principles and on precedent, it must be held that section 25B(2) provides a situation where the workman is not in employment for a period of 12 calendar months but has rendered service for a period of 240 days within the period of 12 calendar months and commencing and counting the backward from the date of retrenchment, if he has, he would be deemed to be in service for the purpose of Section 25B and Chapter V-A and once it is found that the workman is in continuous service u/s 25B(1) of the Act and the workman is satisfying the conditions and contingency mentioned in the said sub-section (1), then, it is wholly immaterial whether he has worked for a particular number of days in a particular year. Contingency which demands the worker to work for a period of 240 days as provided by sub-section (2) of Section 25B would come into play provided the workman is not in continuous service as required under sub-sec. 25B(1) of the I.D. Act."

20. A Division Bench of Madras High Court, in Metal Powder Co. Ltd., Tirumangalam and Another Vs. The State of Tamil Nadu and Another, has held thus at pp. 385-387 :

"13. Now, when we come to Section 3(2) of the Act, as we have already pointed out, it is a concept which has not been found incapable of implementation at any time and has stood the test of time since 1947. Not only is the concept of "continuous service" found in the Industrial Disputes Act, 1947, but we find the same concept in the Payment of Gratuity Act, 1972. In Section 2, Clause (c), "continuous service" has been similarly defined. It reads :

"Continuous service" means uninterrupted service and includes service which is interrupted by sickness, accident, leave, lay-off, strike or a lock out or cessation of work not due to any fault of the employee concerned, whether such uninterrupted or interrupted service was rendered before or after the commencement of the Act."

Explanation 1 to the above definitions more or less similar to Section 25 of the Industrial Disputes Act. A careful reading of Section 3(2) of the Act would indicate that the emphasis is not on the number of days on which the workman has worked, but the emphasis is on the subsisting contract of employment between the employer and the workman. When the section refers to service, it refers to the contract of employment being subsisting, and the various events on account of which service can be interrupted would indicate that each one of them, except non employment and discharge, for the time being, does not result in snapping the ties between the employer and the workman Each one of the above events contemplate a subsisting contract of employment and a subsisting relationship of employee and employer, and when the Legislature in its wisdom has thought fit to bestow the status of permanency on a workman who has been in "continuous service", in which the period of absence on account of the reasons given in (sic) sub-section (2) of Section 3 is also included, then it is difficult to see how such a legislation can be open to challenge on the ground of vagueness, or on the ground of unreasonableness. As a matter of fact, the concept of

"continuous service" is to be originally found in the Factories Act of 1948. Section 49-B of the 1948 Factories Act provided :

"Every worker who has completed a period of twelve months" "continuous service" in a factory shall be allowed, during the subsequent period of twelve months, holidays for a period of ten, or if a child, fourteen consecutive days, inclusive of the day or days, if any, on which he is entitled to a holiday under sub-section (1) of Section 35 ...

Explanation - A worker shall be deemed to have completed a period of twelve months" continuous service in a factory notwithstanding any interruption in service during those twelve months brought about by sickness, accident or authorised leave not exceeding ninety days in the aggregate for all three or by a lock out or by a strike which is not an illegal strike, or by intermittent periods of involuntary unemployment not exceeding thirty days"

It is Therefore almost over fifty years that the concept of continuous service has been incorporated in statutes."

21. In view of the above judgments, the expression "continuous" or "uninterrupted service" means and refers to the days during which the workman was employed and continued to be in service of the employer. It may be stated that absence on account of sickness, authorised leave, accident or strike, which is not illegal or lock-out is to be regarded as a period during which a workman has continued in uninterrupted service of the employer. It may also be noted here that any artificial breaks given malafidely by an employer should not be recognised and a workman should be treated to be in continuous service. (Refer Yogendra Singh Rawat and Others Vs. Hemwati Nandan Bahuguna Garhwal University and Others, and Bhagwati Prasad Vs. Delhi State Mineral Development Corporation, . Courts and Tribunals will Therefore always have power, while applying Section 25B(1) to examine whether the cessation of work was due to any fault on the part of the workman. They can ignore any artificial breaks malafidely given by an employer.

Interpretation of the word "year":

22. The words used in Section 25B(1) is "one year" but the said term has not been defined in the Act. The word "year" has been defined in the General Clauses Act, 1897. Section 3(66) of the aforesaid Act defines the term `year" to mean a period reckoned according to the British Calendar i.e. a period of 12 months from January to December. For the sake of convenience, Section 3(66) of the General Clauses Act, 1897 is reproduced below:-

"Year" shall mean an order reckoned according to the British calendar."

23. However, we do not think that the aforesaid definition as given in the General Clauses Act, 1897 is applicable and should be applied, while interpreting Section 25B(1) of the Act. If definition given in Section 3(66) of the General Clauses Act, 1897 is accepted, any workman who joins employment after 1st January, will be

denied benefit of Section 25B(1) in the first year of employment. This will be extremely unjust and unfair and such interpretation should not be accepted as we are dealing with a social welfare and a beneficial legislation.

24. The Supreme Court in the case of *Aspinwall and Co., Kulshekar, Mangalore Vs. Lalitha Padugady and others etc. etc.*, had examined the provisions of Payment of Gratuity Act, 1972 and Sections 2 and 4 thereof. The expression "continuous service for not less than 5 years" came up for consideration before the Supreme Court in the said case. After examining the said Sections the Supreme Court came to the conclusion that complete or continuous service has to be calculated with reference to the date on which an employee gets employment. It was held that this is the stage, which is starting point and thereafter the period has to be calculated. Thus, the period of continuous service is to be reckoned from the date of joining of the employment. The Supreme Court rejected the contention that this period of continuous service has to be reckoned with reference to a calendar year as defined in the General Clauses Act, 1897.

25. We feel that in view of the fact that the present legislation is social, beneficial and a welfare legislation, workman should be given benefit u/s 25B(1), if he has worked for a continuously or uninterruptedly for a period of 12 consecutive months anytime during the course of his employment. It is not necessary that a worker should have continuously or uninterruptedly worked from January to December in a particular calendar year. Thus, continuous or un-interrupted employment for period of 12 consecutive months will satisfy requirement of Section 25B(1) of the Act.

Whether 240 days is equal to "one year" u/s 25B(1)?

26. Section 25B(1) uses the word "one year", which in common parlance means period of 12 months or 365 days. Can we while interpreting Section 25B(1) reduce this period to 240 days?

27. Sections 25B(1) of the Act being beneficial and welfare provision has to be liberally and broadly interpreted, yet at the same time we cannot amend and modify a statutory provision by incorporating and adding words. Our role is to interpret the law as it exists and not to add and subtract words already used by the legislature or usurp the role of the legislature. The legislature in Section 25B(2) has referred to period of "240 days in the preceding year" following the date of termination as the criteria to determine and decide whether a workman has been in continuous service for a period of one year. The legislature, however, has deliberately not mentioned the period of 240 days during the period of one year as the criteria in Section 25B(1) of the Act. Section 25B(1) nowhere specifies that if a workman has worked for a period of 240 days in a period of "one year", he is deemed to be in uninterrupted service for "one year". The period of 240 days specified in Section 25B(2), cannot be legislated and read into sub-section (1). We cannot, Therefore, legislate and incorporate the words "240

days" into Section 25B of the Act. Our judicial pen cannot write these words into the aforesaid sub-section and read them in Section 25B(1), when the legislature has consciously and deliberately not used these words. The requirement of legislature, as far as Section 25B(1) of the Act is concerned, is clear and unambiguous. It refers to "continuous" or "uninterrupted" service for a period of one year i.e., 12 consecutive months. We cannot by judicial interpretation decrease this period of 365 days to 240 days. Of course the period of one year should be interpreted liberally as has been done in the present judgment. The two judgments, in the case of Moti Ceramic Industries (supra) and Metal Powder Co. Ltd. (supra) support and have similarly interpreted Section 25B(1) and (2) of the Act. Bombay High Court in the case of New Great Eastern Spinning and Weaving Co. Ltd. v. Vasant Mahadeo Bidia reported in 2005 (1) CLR 50 has also taken a similar view.

28. We wish to further clarify that the above interpretation is not against workmen. The legislature has been careful and cautious to include certain periods like authorised leave, legal strikes, lock outs, periods during which the employer illegally refuses to permit the workman to do work, etc., as a period during which the workman is deemed to be in continuous or uninterrupted service. Therefore in a given case, a workman may have worked for in fact less than 240 days, but after including the specified periods mentioned in section 25B(1), his continuous or uninterrupted service might be for a period of 12 consecutive months. Accordingly, we hold that period of 240 days is not relevant as far as Section 25B(1) is concerned as the figure "240 days" is not mentioned in the said sub-section and is mentioned only in sub-section (2). It is not possible for this Court to legislate and add the words 240 days in Section 25B(1) of the Act.

Section 25B(2) of the Act:

29. Sub-section (2) of Section 25B also incorporates a deeming fiction. As per sub-section (2) to Section 25B, if a workman has worked for 240 days or 190 days (in case he is employed below ground in a mine) during the period of 12 calendar months preceding the date with reference to which calculation is to be made, he shall be deemed to be in continuous service for a period of one year. In case of a retrenchment, the reference date will be the date on which the retrenchment order is passed. Therefore, if a workman has worked for 240 days (190 days in case he has worked below ground in a mine) during the period of 12 calendar months preceding the date of his retrenchment, the said workman is deemed to have rendered continuous service for a period of one year. Section 25B(2) refers to a period of 12 months immediately preceding and counting backwards from the relevant date and not to any other period of employment. If a workman has worked for more than 240 days during this period of 12 months prior to his retrenchment, he is deemed to be in continuous service for a year. The words "preceding the date with reference to which calculation is to be made" are not redundant or otiose. The period of 12 months mentioned in Section

25B(2) is not Therefore any period of 12 months but the immediately preceding 12 months with reference to which calculation is to be made.

The two Clauses 25B (1) and 25B (2) in operation:

30. Section 25B(2) as per the clause itself, comes into operation when a workman has not been in continuous service within the meaning of sub-section (1) for a period of one year. However, in practice and for all practical purposes, a workman will be entitled to protection u/s 25F of the Act, if conditions mentioned in either of the two clauses are satisfied. The sub-sections are Therefore in alternative. Requirement of Section 25B(1) is uninterrupted service for a period of one year and under sub-section (2) requirement is service for a period of 240 days (or 190 days in case worker is employed below ground in a mine) during the preceding 12 calendar months prior to the date of termination/retrenchment. By the deeming fiction in Section 25B(2), a workman who has worked for aforesaid period in the preceding 12 calendar months prior to the date of termination/retrenchment is deemed to have been in continuous service for not less than one year. The two provisions, namely, of Section 25B(1) and 25B(2) are separate and distinct. The requirements and conditions to be satisfied to some extent are also different.

Judgments of Supreme Court:

31. The above interpretation is supported by the observations made by the Supreme Court in the case of Mohan Lal Vs. Management of Bharat Electronics Ltd., reproduced below :

Sub-section (2) incorporates another deeming fiction for an entirely different situation. It comprehends a situation where a workman is not in continuous service within the meaning of sub-section (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer for a period of one year or six months, as the case may be, if the workman during the period of 12 calendar months just preceding the date with reference to which calculation is to be made, has actually worked under that employer for not less than 240 days. Sub-section (2) specifically comprehends a situation where a workman is not in continuous service as per the deeming fiction indicated in sub-section (1) for a period of one year or six months. In such a case he is deemed to be in continuous service for a period of one year if he satisfies the conditions in sub-clause (a) of clause (2). The conditions are that commencing (sic) the date with reference to which calculation is to be made, in case of retrenchment the date of retrenchment, if in a period of 12 calendar months just preceding such date the workman has rendered service for a period of 240 days, he shall be deemed to be in continuous service for a period of one year for the purposes of Chapter V-A. It is not necessary for the purposes of clause (2)(a) that the workman should be in service for a period of one year. If he is in service for a period of one year and that if that service is continuous service within the meaning of clause (1) his case would be governed by clause (1) and his case

need not be covered by clause (2). Clause (2) envisages a situation not governed by clause (1). And clause (2)(a) provides for a fiction to treat a workman in continuous service for a period of one year despite the fact that he has not rendered uninterrupted service for a period of one year but he has rendered service for a period of 240 days during the period of 12 calendar months counting backwards and just preceding the relevant date being the date of retrenchment. In other words, in order to invoke the fiction enacted in clause (2) (a) it is necessary to determine first the relevant date i.e. the date of termination of service which is complained of as retrenchment. After that date is ascertained, move backward to a period of 12 months just preceding the date of retrenchment and then ascertain whether within the period of 12 months, the workman has rendered service for a period of 240 days. If these three facts are affirmatively answered in favor of the workman pursuant to the deeming fiction enacted in clause (2)(a) it will have to be assumed that the workman is in continuous service for a period of one year and he will satisfy the eligibility qualification enacted in Section 25-F. On a pure grammatical construction the contention that even for invoking clause (2) of Section 25-B the workman must be shown to be in continuous service for a period of one year would render clause (2) otiose and socially beneficial legislation would receive a set back by this impermissible assumptions. The contention must first be negated on a pure grammatical construction of clause (2). And in any event, even if there be any such thing in favor of the construction, it must be negated on the ground that it would render clause (2) otiose.

We have already extracted Section 25-B since its amendment and the change in language is the legislative exposition of which note must be taken. In fact, we need not further dilate upon this aspect because in *Surendra Kumar Verma v. Central Government Industrial Tribunal-cum-Labour Court*⁶, *Chinnappa Reddy, J.*, after noticing the amendment and referring to the decision in *Sur Enamel & Stamping Works (P) Ltd.*⁷ case held as under: 449 SCC 50: 23 (22) SCC (L&S) 9

"These changes brought about by Act 36 of 1964 appear to be clearly designed to provide that a workman who has actually worked under the employer for not less than 240 days during a period of twelve months shall be deemed to have been in continuous service for a period of one year whether or not he has in fact been in such continuous service for a period of one year. It is enough that he has worked for 240 days in a period of 12 months; it is not necessary that he should have been in the service of the employer for one whole year."

In a concurring judgment Pathak, J. agreed with this interpretation of Section 25-B(2) . Therefore, both on principle and on precedent it must be held that Section 25-B(2) comprehends a situation where a workman is not in employment for a period of 12 calendar months, but has rendered service for a period of 240 days within the period of 12 calendar months commencing and counting backwards from the relevant date i.e. the date of retrenchment. If he has, he would be deemed to be in continuous service for a period of one year for the purpose of

Section 25-B and Chapter V-A."

32. In the case of Ramakrishna Ramnath Vs. The Presiding Officer, Labour Court, Nagpur and Another, Supreme Court has held :

Consequently an enquiry has to be made to find out whether the workman has actually worked for not less than 240 days during a period of 12 calendar months immediately preceding the retrenchment. These provisions of law do not show that a workman after satisfying the test u/s 25-B has further to show that he has worked during all the period he has been in the service of the employer for 240 days in the year.

33. It is, however, necessary to distinguish judgment of the Supreme Court in the case of U.P. Drugs and Pharmaceuticals Company Limited Vs. Ramanuj Yadav and Others, . In the said case supreme Court was interpreting the expression "continuous service" is defined in Section 2(g) of the U.P. Industrial Disputes Act, 1947 which reads as under:

"2(g) "Continuous service" means uninterrupted service, and includes service which may be interrupted merely on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lockout or a cessation of work which is not due to any fault on the part of the workman, and a workman, who during a period of twelve calendar months has actually worked in an industry for not less than two hundred and forty days shall be deemed to have completed one year of continuous service in the industry.

34. Keeping in view the section involved, it has been observed in U.P. Drugs (supra) at page 341 as under:

10. Under the aforesaid legislative background, the question involved is required to be reconsidered. Section 2(g) of the U.P. Act does not require a workman, to avail the benefit of the deeming provision of completion of one year of continuous service in the industry, to have worked for 240 days during the "preceding" period of twelve calendar months. The word "preceding" has been used in Section 25-B of the ID Act as incorporated in the year 1964. Section 2(g) does not use the word "preceding"....

35. Thus Supreme Court noticed the distinction in the language of the Act and the U.P. Industrial Disputes Act, 1947, where the words "preceding the date of termination" are conspicuous by their absence. In these circumstances and keeping in view the language used in the U.P. Industrial Disputes Act, 1947 it was held that if a workman has worked for 240 days in any previous year during the term of his employment, the said workman has to be treated as being in continuous service for a period of one year. The language of the two sections being different, they have to be interpreted keeping in view the words used by the legislature. The said decision in fact supports the interpretation given by us.

Findings and Conclusion

36. On the basis of the above interpretation we have to examine whether the appellant satisfied the requisite conditions mentioned in Section 25F read with Section 25B of the Act.

37. The onus to prove and establish that conditions of Section 25B(1) or (2) are satisfied is upon the workman. (Refer : The Range Forest Officer Vs. S.T. Hadimani, & Essen Deinki Vs. Rajiv Kumar,

38. We have examined the claim statement filed by the appellant before the Labour Court. In the said claim statement, it is not mentioned and stated how and why the appellant-workman was "in continuous service for a period of one year" or more. In the affidavit filed by the appellant before the Labour Court, he has stated that he actually worked for 233 days in 1984, 258 days in 1985 and for 27 days in January, 1986. This statement does not appear to be correct as the appellant along with his writ petition had also filed a chart showing actual working days during the period of 1984-1986. As per the said chart, the appellant had worked for 223 days up to December, 1984 and 193 days between January, 1985 to December, 1985 and for 83 days from January, 1986 to September, 1986. However, even in the affidavit filed by the appellant before the Labour Court, no attempt was made to establish and prove that the appellant was "in continuous or interrupted service for period of one year" as provided in Section 25B(1) of the Act and the conditions of the said Section were satisfied. The Labour Court also in its award has not referred to Section 25B(1) of the Act whatsoever and has only mentioned Section 25B(2) of the Act. It appears that the appellant did not claim that he is entitled to protection u/s 25B(1) of the Act. Before the learned single Judge also reliance was placed upon Section 25B(2) of the Act and the appellant herein relied upon the said provision and it was submitted that the conditions of the said provision will be satisfied if a workman has worked for period of 240 days in any year and it was not necessary that the workman should have worked for period of 240 days during the period of 12 months preceding the date of reference, i.e., date of termination. As stated above, we have rejected the contention of the appellant in this regard and have held that Section 25B(2) of the Act refers to period of 12 months from the date with reference to which calculation is to be made, which in the present case is the date of termination and not any period prior to 12 months.

39. In view of the above, we hold that the appellant, was not "in continuous service for a year" with the respondent as per Section 25B of the Act. The present Appeal, Therefore, has no merit and the same is liable to be dismissed. However, keeping in view the facts and circumstances of the case, we pass no orders as to costs.

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Non obstinate clause effect of

39. The interpretation of Section 25-J of the 1947 Act as propounded by Mr Das also cannot also be accepted inasmuch as in terms thereof only the provisions of the said chapter shall have effect notwithstanding anything inconsistent therewith contained in any other law including the Standing Orders made under the Industrial Employment (Standing Orders) Act, but it will have no application in a case where something different is envisaged in terms of the statutory scheme. A beneficial statute, as is well known, may receive liberal construction but the same cannot be extended beyond the statutory scheme. (See Deepal Girishbhai Soni v. United India Insurance Co. Ltd.⁹)

40. In the instant case, we are not concerned with the liability of the erstwhile Company. It stands accepted that the appellant has no monetary liability as regards the amount of compensation payable to the workmen in view of Section 5 of the said Act.

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4. The principles of statutory construction are well settled. Words occurring in statutes of liberal import such as social welfare legislation and human rights" legislation are not to be put in Procrustean beds or shrunk to Liliputian dimensions. In construing these legislations the imposture of literal construction must be avoided and the prodigality of its misapplication must be recognised and reduced. Judges ought to be more concerned with the "colour", the "content" and the "context" of such statutes (we have borrowed the words from Lord Wilberforce's opinion in *Prenn v. Simmonds*⁶). In the same opinion Lord Wilberforce pointed out that law is not to be left behind in some island of literal interpretation but is to enquire beyond the language, isolated from the matrix of facts in which they are set; the law is not to be interpreted purely on internal linguistic considerations. In one of the cases cited before us, that is, *Surendra Kumar Verma v. Central Government Industrial Tribunal-cum-Labour Court*¹, we had occasion to say,

"Semantic luxuries are misplaced in the interpretation of "bread and butter" statutes. Welfare statutes must, of necessity, receive a broad interpretation. Where legislation is designed to give relief against certain kinds of mischief, the Court is not to make inroads by making etymological excursions."

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